Judgment Reserved

**IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL**

**A.O. No. 1053 of 2001**
**(Old No. 758/1997)**

The New India Assurance Company Limited through its Assistant Manager, Divisional Office, Civil Lines, Allahabad. .....Appellant.

**Vs**

1. Ashok Singh Son of Sri Raghubeer Singh
   Resident of Village Patal, Patti-Khatasyun,
   Post Office Chaurkhal, District- Pauri Garhwal.
2. Yashwant Singh, Resident of Gagwara,
   Patti- Gaguwarsiun, Post Office- Wali,
   District- Pauri Garhwal. ....Respondents

Sri T.A. Khan learned counsel for the appellant.
Sri Rakesh Thapliyal learned counsel for the respondents.

Dated: -31-8-2006

**Hon'ble B.S. Verma , J.**

Heard Sri T. A. Khan learned counsel for the appellant and Sri Rakesh Thapliyal learned counsel for the respondents.

2. The present appeal has been preferred against the award dated 27-5-1997 passed by Sri Rajan Shukla, Workmen's Compensation Commissioner, Pauri Garhwal, whereby the compensation of Rs. 1,45,167/- has been awarded to the claimant –respondent No.1 along with 6% interest.

3. Brief facts of the case are that the claimant-respondent No.1 had filed the claim petition as W.C.Case No.2/94-95 before the Workmen's Compensation Commissioner, Pauri Garhwal for a total compensation of Rs. 1,15,000/- for his injuries sustained in a Motor Accident during the course of employment under the respondent No.2.

4. The claimant-respondent was employed under the respondent No.2 as driver on the Vehicle No. UP06/1251. On 30-1-1994, when the vehicle was driven by the claimant near about 1 ½ km. away from Satpali towards Daunsal side in District Pauri Garhwal, the said vehicle met with an accident on account of sudden breakdown and heavy fog causing severe injuries to the claimant. It was also alleged that the salary of the claimant was Rs. 1,500/- per month and he was also getting Rs. 20/- per day as D.A. The respondent No. 2 is the owner of the vehicle No.UP06/1251, which is a bus. The respondent No.2, the owner of the vehicle, filed his written statement. In his written statement he admitted that the claimant-respondent No.1 was driving bus UP06/1251 at the time of accident and he alleged that the salary of the claimant was Rs. 1000/- per month. The respondent No.2 owner of the vehicle has further contended that the vehicle was insured with the appellant at the time of accident and the appellant would be liable to pay compensation, if any. It was also contended that at the time of accident the driver was having a valid driving licence and other valid papers.

5. The appellant-insurance company also filed his written statement and contested the case. The appellant-insurance company denied the allegations of the case and its liability. The appellant had further contended that the claimant-respondent No.1 did not produce the certificate of regular service since he was a casual labour and the claimant had not produced his medical certificate for disability, age certificate and driving licence. The appellant-insurance company alleged that as per terms and conditions of the Insurance Policy, the claimant respondent No.1 was not entitled for any amount of compensation.

6. After hearing both the parties and on the basis of the evidence adduced before him by the parties. The learned Workmen's Compensation Commissioner awarded Rs. 1,45,167/- as compensation to the claimant-respondent No.1. Aggrieved by the order, the appellant has preferred the present appeal under Section 30 of the Workmen's Compensation Act No.30 of 1995. The following substantial questions of law framed in this appeal are that:-

(1) Whether the amount of compensation in the present case would be payable as per provisions of the Workmen's Compensation Act as were applicable at time of the accident?

(2) Whether the provisions of the Workmen's Compensation Act which were amended by the Workmen's Compensation (Amendment) Act, 1995 (Act No.30 of 1995) which came into force after the accident w.e.f.21-8-1995 would be retrospectively applicable in the present case and the amount of compensation would be payable as per such provisions?

(3) Whether the Insurance Company, the appellant, would be liable to pay interest or penalty as per provisions of Section 4A of the Workmen's Compensation Act?

7. Admittedly, the accident took place on 30-1-1994, in my view the aforementioned substantial question of law involved in this appeal, which is to be answered is that whether the provisions of the Amendment Act 1995 (Act No. 30 of 1995) Workmen's Compensation Act, would be applicable at the time of the accident for determination of compensation.

8. It is not disputed that the provisions of the Workman's Compensation (Amendment) Act, 1995 (Act No.30 of 1995) came into force w.e.f 15-9-1995. A perusal of the amended provision, it reveals that the fact of the amendment is prospective not retrospective.

9. It is significant to note that till the date of coming into force i.e 15-9-1995 of Act No.30 of 1995, the wages to be taken into account of the workmen was Rs. 1000/-, which was substituted by Rs. 2000/- by the said Act and thereafter, by Workmen's Compensation (Amendment) Act, 2000; the wages at the most shall be at the rate of Rs. 4000/- per month for computing compensation. The injured workmen was aged 23 years on the date of accident in view of the prevailing position of law, the workmen could be entitled to get compensation as 60% of salary i.e. Rs.600 per month multiplying by relevant factor of 219.95. Thus, the compensation admissible to workmen comes to 600 x 219.95= 1,31,970 instead of Rs. 2,63,940/-. The admissibility on this amount to the workmen is not under challenge.

10. Learned counsel for the Insurance Company has submitted that in view of the provision of Section 4 A of the Workmen's Compensation Act, the Insurance Company is not liable to pay any interest or penalty.

11. So far as the liability of the Insurance Company to pay the interest on the amount of compensation is concerned, in view of the Apex Court Judgments in the case of L.R. Ferro Alloys Ltd. Vs. Mahavir Mahto and another 2002 (9) SCC 450 wherein it has been held that *" Labour Law-Workmen's Compensation Act, 1923-Ss, 3,4-A (3)(a) and (b) and 19(1)-Payment of interest and penalty- Held, are two distinct liabilities- Liability of insurance company-Extent of-Failure to pay compensation within one month from date of accident- held, insurance company is liable to reimburse only the compensation with interest thereon, if any, and not the penalty imposed on insured employer for default of payment of amount within one month"*

12. In an earlier decision in the case of Ved Prakash Garg Vs. Premi Devi and others JT 1997 (8) S.C 229, wherein it has been categorically been held that the compensation with interest is payable by the Insurance Company, but not the penalty and also the Insurance Company was liable to pay the compensation to the claimant.

13. In view of the above observation, the appeal is partly allowed and the award dt 27-5-1997 passed by the Workmen's Compensation Commissioner is modified accordingly. The claimant Respondent No.1 is entitled for compensation of Rs. 1,31,970/- instead of Rs. 2,63,940/-. No order as to costs.

**(B.S. Verma, J)**

Dated: - 31-8-2006